IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 671 OF 2006
IN
Arbitration Petition No. 36 of 2005

The Security Printing & Minting
Corporation of India Ltd., & Anr. .. Appellants.

V/s.

M/s.Gandhi Industrial Corporation
Mumbai. .. Respondent.

Ms.S.I.Shah i/by Dr.T.C.Kaushik for the Appellants.

Mr.T.J.Pandian for the Respondent.

CORAM : R.M.LODHA & S.A.BOBDE,JJ.

DATED : 22nd SEPTEMBER, 2006.

P.C.:

. We heard Ms.S.I.Shah, the counsel for the Appellants and perused the impugned order as well as the Award passed by the sole Arbitrator.

2. The Respondent filed the claim before the Arbitrator, appointed by this court under section 11 of the Arbitration and Conciliation Act, 1996, under various heads. With regard to the claim in the sum of Rs.2,95,99,673/- (Rupees Two crore ninety-five lakhs ninety-nine thousand and six hundred seventy-three) being the value of the MODVAT, the arbitral Tribunal awarded the claim in the sum of Rs.50,64,155/- (Rupees

Fifty lakhs sixty-four and one hundred fifty-five).

3. The Award dated 4th of October, 2004 was challenged by the Appellants by filing arbitration Petition under section 34. Inter-alia, the case of the Appellants before the learned single Judge was that as per the MODVAT Scheme, the respondent - claimant was liable to make over the Modvat benefit to the Appellants and, therefore, the adjustment of the Modvat benefit by the Appellants was proper and that the Arbitrator was not justified in awarding a sum of Rs.50,64,155/- to the claimant-respondent.

4. The learned single Judge did not find any merit in the submission of the Appellants, particularly in view of the letter dated 15th of March, 1995, written by the present Appellants to the Additional Collector, Central Excise. We asked the counsel for the Appellants to show us the copy of the said letter. However, she submitted that the said letter is not part of the paper book and that she is unable to show the copy thereof. We are thus deprived of the perusal of the letter dated 15th March, 1995. Whatever the learned single Judge has observed with regard to the said letter dated 15th March,1995 must be accepted by us as nothing has been shown to the contrary. On the consideration of the said

letter, the learned Judge observed thus : one, that the claimant was a Gummer for the Ashoka Pillar Watermark (APWM) Stamp base paper for about three decades prior to 1995; two, the stamp base paper was exempted from the payment of excise duty; third, the claimants could not be permitted to buy stamp paper from the open market because of the security item; in other words, the appellants were required to buy stamp papers from paper mills and supply it to the Gummer and fourth, the respondent got itself registered as Small Scale Industrial Unit. The learned single Judge then concluded that the claimant was entitled to avail of Modvat benefit and that the Appellants could not claim transfer of Modvat benefit to them. The said finding cannot be said to suffer from any legal infirmity.

5. From the perusal of the Award passed by the sole Arbitrator it transpires that in the offer submitted by the claimant on June 25, 1994, it was specifically recited that the claimant would be entitled to receive the Modvat credit and the present Appellants should issue the necessary documents including the gate passes to the claimant for availing the Modvat credit. However, in the purchase order of May 31, 1994, the present Appellants added a term that the Modvat credit, if any, availed by the claimant will have to be passed

on to the present Appellants. The claimant though agreed to accept the order, vide its letter dated 5th June,1995, made it clear that it was subject to the withdrawal of the term relating to passing of Modvat credit to the Appellants. The Arbitrator recorded that the letter dated June 05,1995, written by the claimant, makes it clear that only on confirmation of the present Appellants, the claimant will proceed with the execution of the contract. The present Appellants did not respond and rather forwarded base papers to the claimant to carry out the work of gumming and super calendaring of base paper. The claimant though repeatedly informed the present Appellants that the Modvat credit shall be made available to them (claimant), there was no response from the present Appellants in opposition. It was only by the letter dated December 16, 1995 for the first time that the present Appellants claimed that the issue about the Modvat credit was being examined and the decision would be communicated and by the subsequent letter dated December 30, 1995, the present Appellants communicated that the Modvat credit availed by the claimant shall be transferred to them (the Appellants herein). The claimant did not accept the decision but the present Appellants continued to demand the Modvat credit and ultimately, the present Appellants recovered the Modvat credit by deduction of amounts payable to the claimants.

6. The sole Arbitrator on consideration of the entire material, held that the unilateral decision of the present Appellants in deducting value of the Modvat from the amounts payable to the claimant was entirely against the Modvat Scheme and contrary to the tender notice issued. The Arbitrator further held that it was not permissible to alter the terms and conditions of the offer letter to the detriment of the claimant and ultimately held that the deduction made by the present Appellants in respect of the Modvat in the sum of Rs. 50,64,155/- was unsustainable and the Appellants were bound to pay the said amount to the claimant. The view taken by the sole Arbitrator cannot be said to be absurd or against the evidence on record.

7. In this view of the matter, non-interference with the Award by the learned single Judge cannot be faulted. The Appeal has no merit and is dismissed in limine.

(R.M.LODHA,J)

(S.A.BOBDE,J)

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